IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

TUESDAY, THE 9TH OCTOBER 2007 / 17TH ASWINA 1929

Crl.MC.No. 3085 of 2007()

CC.6/2004 of JUDL.MAGISTRATE OF FIRST CLASS COURT, OTTAPPALAM

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PETITIONER: ACCUSED

HYDERKUTTY @ KUNHIPPA,
S/O. MUHAMMED UNNI, KALLIYATH HOUSE,
MANGATTIRI, TIRUR, MALAPPURAM DISTRICT.

BY ADV. SRI.BABU S. NAIR

RESPONDENTS: STATE

THE STATE OF KERALA, REPRESENTED BY
THE SUB INSPECTOR OF POLICE, CHERPULASSERY
POLICE STATION - THROUGH THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM, KOCHI-31.

BY PUBLIC PROSECUTOR ADV.SRI.M.S.BREEZ

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 09/10/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

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Crl.M.C. No. 3085 Of 2007

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Dated this the 9th day of October, 2007

ORDER

Petitioner faces indictment in a prosecution under Section 420 IPC before the Judicial First Class Magistrate Court, Ottapalam. Cognizance has been taken on the basis of the final report submitted by the Police in a crime. That crime was registered on the basis of a private complaint. The accused in the case was arrested and enlarged on bail. Consequent to non-appearance of the accused, co-ercive processes has been issued by the learned Magistrate . The petitioner finds such co-ercive processes under section 82 and 83 as well as warrant of arrest issued by the learned Magistrate chasing him.

2. It is the case of the petitioner that he is not the accused in that case. He had never appeared nor was he produced before the learned Magistrate in that case. One person who was produced, it is submitted, appears to have given the name of the petitioner as the accused and executed the bail bond. Thereafter that person is absconding. The petitioner is exposed to the ordeal of facing the prosecution now. His property has also been attached.

3. To sum up, according to the petitioner, he is absolutely innocent. He was never arrested or produced before the learned

Magistrate. As warrants of arrests against him and steps under Section 82 sand 83 Cr.P.C as against his properties, are all initiated, the petitioner is willing to surrender before the learned Magistrate and seek regular bail. The petitioner wants the learned Magistrate to consider his plea that he is not the real accused and he is not the one who was produced earlier and was enlarged on bail by the learned Magistrate. He further wants his application for bail to be considered, at any rate, expeditiously by the learned Magistrate. It would be hazardous for this Court to express any opinion on the acceptability of the contentions raised by the petitioner. I need only mention that it would be for the petitioner to raise all his contentions before the learned Magistrate. The learned Magistrate must consider such contentions raised on merits, in accordance with law and expeditiously. No further directions appear to be necessary.

4. This petition, in these circumstances, is dismissed, but with the specific observation that if the petitioner surrenders before the learned Magistrate and applies for bail, the learned Magistrate must consider all the contentions which the petitioner wants to raise. I expect that the learned Magistrate must pass orders,on merits, in accordance with law and expeditiously.

` Hand over a copy of this order to the learned counsel for the petitioner.

(R.BASANT, JUDGE)

sj